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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,247	09/10/2003	Jace N. Green	025636-0109	4809
26371	7590	10/05/2005	EXAMINER	
FOLEY & LARDNER 777 EAST WISCONSIN AVENUE SUITE 3800 MILWAUKEE, WI 53202-5308			LU, JIPING	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 10/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/659,247	GREEN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Jiping Lu	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 13-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12, 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. This application contains claims 13-20 drawn to an invention nonelected without traverse in Paper filed 11/1/2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Hamilton (U. S. Pat. 2,805,559).

Hamilton shows an evaporative cooler comprising a housing 10, a fan (in 25), a duct system 27, 37 for directing air into an opening in a building (see col. 3, lines 30-33) which are arranged same as claimed.

### ***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 2-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton (U. S. Pat. 2,805,559) in view of Galeazzi et al. (EP 0718564A2).

The evaporative cooler of Hamilton as above includes all that is recited in claims 2-8 except for the duct system with an extension portion that is positioned within the window of the building. Galeazzi teaches a portable air conditioning equipment with a duct system 17 having an extension portion 18 positioned within the opening in the window same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the duct system of Hamilton with a duct system having extension portion of Galeazzi et al. in order to direct air into the window and to facilitate the use of evaporative cooler.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton (U. S. Pat. 2,805,559) in view of Galeazzi et al. (EP 0718564A2) as applied to claim 8 above, and further in view of Campbell et al. (U. S. Pat. 4,819,448) or Cavender (U. S. Pat. 6,546,744).

The evaporative cooler of Hamilton as modified by Galeazzi et al. as above includes all that is recited in claim 9 except for the adjustable legs. Patent to Campbell et al. or Cavender teaches an evaporative cooler with adjustable legs for leveling the cooler same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the evaporative cooler of Hamilton with adjustable legs as taught by Campbell et al. or Cavender in order to facilitate the installation of the evaporative cooler.

7. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton (U. S. Pat. 2,805,559) in view of Galeazzi et al. (EP 0718564A2) and Campbell et al. (U. S. Pat. 4,819,448) or Cavender (U. S. Pat. 6,546,744) as applied to claim 9 above, and further in view of Grandinetti (U. S. Pat. 2,620,638).

The evaporative cooler of Hamilton as modified by Galeazzi et al. and Campbell et al. or Cavender as above includes all that is recited in claims 10-12 except for the expandable frame between the window and the extension member. Patent to Grandinetti teaches an evaporative cooler with expandable frame 111 for mounting duct member to the window same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the evaporative cooler of Hamilton with expandable frame as taught by Grandinetti in order to facilitate mounting the extension member to the window.

8. Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamilton (U. S. Pat. 2,805,559) in view of Campbell et al. (U. S. Pat. 4,819,448) or Cavender (U. S. Pat. 6,546,744).

Hamilton shows an evaporative cooler comprising a housing 10, a fan (in 25), a duct system 26, 27, 37 for directing air into an opening in a building (see col. 3, lines 30-33) which are arranged same as claimed. The evaporative cooler of Hamilton includes all that is recited in claims 21-23 except for the adjustable legs. Patent to Campbell et al. or Cavender teaches an evaporative cooler with adjustable legs for leveling the cooler same as claimed. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the evaporative cooler of Hamilton with adjustable legs as taught by Campbell et al. or Cavender in order to facilitate the installation of the evaporative cooler.

### ***Response to Arguments***

9. Applicant's arguments filed 7/26/2005 have been fully considered but they are not persuasive to overcome the rejections. First, broad claims presented fail to structurally define

over the prior art references. The applicant is requested to point out from the claims exactly which structural limitation, if any, that the prior art references do not show or teach. The claimed structure is nothing but an air recirculation mounted on a window. The Hamilton patent clearly shows such air recirculation structure. Second, the applicant argues the broad claims call for “evaporative cooler” in the preamble of the broad claims that the prior art references do not show or teach. In response to applicant's arguments, the recitation evaporative has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951). Moreover, the prior art references are dealing with window mounted air coolers same as the claimed structure. The prior art air coolers also contain evaporator as a part of the cooling system. However, broad claims presented fail to structurally define over the prior art. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, for example, Hamilton shows an identical structure as broad claimed except for the duct system with an extension portion that is positioned within

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the window of the building. Galeazzi patent shows teaches a portable air conditioning equipment with a duct system 17 having an extension portion 18 positioned within the opening in the window same as claimed. Therefore, it is the combined teachings of the references one skilled in the art would have been able to substitute the duct system of Hamilton with a duct system having extension portion of Galeazzi et al. in order to direct air into the window and to facilitate the use of evaporative cooler. It should be noted the teaching to combine the references is not necessarily coming from Hamilton patent.

### *Conclusion*

**10. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

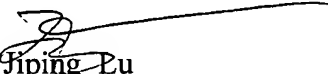
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

**11.** Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jiping Lu whose telephone number is 571 272 4878. The examiner can normally be reached on Monday-Friday, 9:00 AM - 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira Lazarus can be reached on 571 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jiping Lu  
Primary Examiner  
Art Unit 3749

J. L.